

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6496 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No
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RAMESH C. PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR PV HATHI for Petitioner  
MR BY MANKAD, AGP as instructed by MR HASMUKH PATEL,  
GOVT. SOLICITOR, for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
MR HS MUNSHAW for Respondent No. 3

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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/12/1999

ORAL JUDGEMENT

Heard the learned Counsel for the respective  
parties.

2. The petitioner has approached this Court under

Article 226 of the Constitution of India for appropriate directions to the respondent Nos. 2 and 3 for enforcement of the statutory rules which required preparation of seniority lists in particular cadres and to challenge the promotions given without preparation of such seniority lists. While admitting the matter on 9.12.1987, this Court had granted ad-interim relief in terms of paragraph 14 (D) & (E) of the petition. It would be necessary to refer to paragraph 14 (E) of the petition which is as under:

"(E) To issue an interim mandatory order directing the third respondent - District Panchayat, Ahmedabad, to prepare separate seniority lists of the two cadres of Accounts and Clerical and submit the same before this Hon'ble Court within one and half month on receipt of the notice of this petition, pending the hearing and final disposal of this petition."

The ad-interim relief granted as above was confirmed on 11.1.1991.

3. The petitioner claims to have originally joined as a junior clerk in the office of the District Panchayat, Mehsana in 1972 and thereafter joined the respondent No.3, i.e. District Panchayat, Ahmedabad, from 18.12.1974 where he worked for many years as a cashier in Dascroi Taluka discharging duties related to accounts and financial matters. Under the Gujarat Panchayats Service (Classification and Recruitment) Rules, 1977, the District Panchayat was required to prepare a seniority list after bifurcating clerical staff into two cadres, viz. clerical cadre and accounts cadre. Even though the option forms required to be filled up by the clerks were collected in 1982, separate cadres and seniority lists were not prepared by the respondent No.3. It is further stated that from 28.4.1978, when the allotment procedure was prescribed, the District Panchayat was bound to enforce and implement the rules for the purposes of finalising allotment of its employees to the respective cadres as specified in the Recruitment Rules as amended in 1977. At the time of submitting the option forms, i.e. on 29.9.1982, the petitioner had opted for the common accounts cadre. However, the Panchayat did not proceed further in the matter of preparing separate seniority lists of the respective cadres and started filling up vacant posts in accounts cadre throughout the District by appointing the persons

who had opted for clerical cadre. It is contended that for the purpose of filling up of such posts and promoting junior clerks, the Panchayat operated the old common seniority lists prepared in 1977 which were required to be revised in view of the aforesaid rules and pursuant to which the option forms were already collected.

4. It is further submitted on behalf of the petitioner that in Special Civil Application No.294 of 1978, in which the aforesaid Rules were challenged, it was observed in the order dated 11.8.1983 that the amended rules were required to be immediately implemented and each and every employee entitled to exercise the option under the rules was required to be served with a personal notice and that their respective claims were to be decided so as to give them a clear picture of their seniority and promotional chances. While many other District Panchayats in Gujarat had followed the said directions and implemented the rules, the respondent No.3 Panchayat had omitted to do so. According to the petitioner, three posts of senior accounts clerk were filled in on 11.12.1981 by appointing junior clerks from the clerical cadre on the excuse that preparation of two separate lists after obtaining the options was likely to take long time. Thereafter, even in 1985, the respondent Panchayat issued a number of orders promoting junior clerks, who might have opted for clerical cadre, to the posts of senior accounts clerks despite the statutory obligation to promote junior clerks from the accounts cadre only. By three separate orders dated 29.1.1985, three junior clerks, who had opted for the clerical cadre, were promoted to the posts of senior accounts clerk in the accounts cadre.

5. By filing a further affidavit, the petitioner has stated that, as the interim directions in this matter were not complied with, Civil Miscellaneous Application No.426 of 1988 was filed by him and thereafter on 19.5.1988, two separate lists were published and were kept provisional showing the positions of the employees as on 13.5.1977. It is contended that the higher posts in the accounts cadre were admittedly available for being filled in from amongst the employees who had opted for the accounts cadre. Referring to a letter dated 18.6.1988 of the District Panchayat to its advocate, it is contended that, on 13.5.1977, there were 33 posts of senior accounts clerks against which only 28 employees had opted for that cadre and, as on 10.6.1988, the number of posts of senior clerks had increased to 127. On the basis of these facts and submissions, it is further prayed that a deemed date of promotion may be granted to

the petitioner in view of the fact that he was already promoted to the post of senior accounts clerk by the order dated 12.6.1989.

6. It has to be noted that the interim direction to prepare separate seniority lists of the two cadres and to submit the same before this Court had not been carried out in time. The separate seniority lists are as yet not placed on record. At the fag-end of the hearing, an affidavit-in-reply on behalf of the respondent No.3 has come to be filed along with the seniority lists of senior accounts clerks as on 1.1.1995. According to the said affidavit, the petitioner was transferred to the Ahmedabad District Panchayat and joined the cadre of junior clerk with effect from 18.12.1974. The separate seniority lists were published in the year 1989, which showed the positions of the employees concerned as on 1.1.1989. It is submitted that, according to the seniority lists published on 11.1.1996 showing the positions as on 1.1.1995, the persons senior to the petitioner were promoted. It is contended that the petitioner has failed to show that his immediate junior was promoted in the cadre of the senior clerk (accounts) prior to him. Although the said affidavit does not offer parawise replies or comments, it is seriously disputed that the three junior clerks named in the petition were promoted to the post of senior accounts clerk even though they had opted for the clerical cadre. It is stated that out of the three promotees, Shri P.K.Doshi and Mrs. Gita G.Shah were senior to the petitioner and were promoted to the cadre of senior clerk (clerical). As for the third employee, namely, Ms. C.R.Mehta, details of her seniority were not immediately available but it is admitted that she was promoted to the post of senior clerk (accounts) on 3.3.1983. Thus, it is denied that juniors to the petitioner were promoted to the cadre of senior clerk (accounts) prior to him and ignoring his seniority.

7. There is no dispute about the fact that the respondent - District Panchayat has admittedly failed in preparing the separate seniority lists in accordance with the rules and has not considered the options already submitted by the employees concerned and collected by it in 1982 for well over six years. The petitioner claims that he was entitled to be promoted to the post of senior accounts clerk in the accounts cadre on and from the date on which the options were taken in June, 1982. Instead, after publication of the seniority lists in accordance with the rules in 1988, the petitioner was, in fact, promoted to the post of senior accounts clerk by the

order dated 12.6.1989. Therefore, the respondent has rightly not raised the issue of merits of the petitioner.

8. The respondent has come out with an evasive and vague defence to the effect that the three promotees were senior in the general seniority lists available at that time and it was due to several administrative reasons that the Gujarat Panchayats Service (Classification and Recruitment) Rules as amended in 1977 could not be implemented in time. Both these submissions have to be stated to be rejected. It appears that, after the grant of ad-interim relief in 1987, the case of the petitioner was considered for promotion in view of his having opted for the accounts cadre. According to the seniority lists of the senior accounts clerks as on 1.1.1995 annexed with the affidavit-in-reply filed on behalf of the Panchayat, after Mrs. C.R.Mehta, three other clerks have been promoted to the post of senior clerks (accounts) in 1985. Thereafter, on 13.6.1989, the petitioner is promoted along with two other employees. The respondent No.3 has neither cared to place on record the separate seniority lists as ordered by way of ad-interim relief nor to disclose as to which cadre the two other junior clerks who were promoted in 1985 had opted for. In absence of such vital facts coming on record, it would be proper to infer that the petitioner would have also been promoted in 1985 if the separate seniority lists were prepared and published and acted upon in time in accordance with the rules. Now, as the petitioner is already promoted to the post of senior accounts clerk with effect from 13.6.1989, it would be reasonable to order that the petitioner shall be given deemed date of promotion to the post of senior accounts clerk with effect from 29.1.1985, when another junior clerk junior to Ms.C.R.Mehta was promoted. In these facts and circumstances, the respondent No.3 is directed to give to the petitioner the deemed date of promotion to the post of senior accounts clerk with effect from 29.1.1985 with all the consequential benefits, including seniority, fixation of pay etc., but without the financial benefit of difference of wages or arrears thereof for the period from 29.1.1985 to 12.6.1989.

9. The petition is allowed and Rule is made absolute accordingly. The respondent No.3 shall pay to the petitioner Rs.2,500/- by way of costs of this petition. This order shall be implemented by the respondent No.3 within six weeks of the receipt of the writ of this order.

Sd/-

( D.H.Waghela, J. )

(KMG Thilake)

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